WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

JORGE MACHUCA, ***Applicant***

vs.

MAR VISTA BERRY, II, INC.;
TRAVELERS PROPERTY CASUALTY COMPANY administered by SEDGWICK, INC.
Defendants

Adjudication Numbers: ADJ17215880, ADJ22555704
Goleta District Office

OPINION AND ORDER DENYING PETITION FOR RECONSIDERATION

Defendant seeks reconsideration of the Findings and Award (F&A) dated June 26, 2026. The workers' compensation administrative law judge (WCJ) found, in relevant part, that applicant while employed on October 12, 2022 as a truck driver by defendant, sustained injury arising out of and within the course of employment to his cervical spine, left shoulder, and left wrist; that applicant's injury caused partial permanent disability of 24 percent; and that there was no basis for apportionment.

Defendant contends that the WCJ erred by not finding apportionment of permanent disability according to the opinion outlined by the Qualified Medical Evaluator (QME).

Applicant did not file an answer. The WCJ issued a Report and Recommendation (Report) recommending denial of the Petition.

We have considered the allegations of the Petition for Reconsideration and the contents of the Report with respect thereto. Based on our review of the record, for the reasons stated in the WCJ's Report, and for the reasons discussed below, we will deny reconsideration.

FACTS

Applicant while employed on October 12, 2022, as a truck driver, by defendant, sustained injury arising out of and in the course of employment to his cervical spine, left shoulder, and left wrist.

Applicant was seen by QME Scott Graham, M.D., on June 7, 2023. (Applicant's Exhibit 1.) The mechanism of injury was reported as "He stated he was laying boxes on a loading truck when he pulled the tie-down rope and felt a strain in the left shoulder" (*Id.* at p.2.) The report noted that prior to working for defendant, applicant worked for farms as a tractor driver for seven months, but did not specify the exact period of time. Prior to that he worked for twelve years as a tractor driver with another company. (*Id*. at p. 6.) Applicant was diagnosed with status post left shoulder arthroscopic surgery, adhesive capsulitis left shoulder, cervicalgia, and "rule out cervical radiculopathy vs. carpal tunnel syndrome left upper extremity." (*Id*. at p. 12.) The QME opined that the left shoulder condition and the cervical condition resulted from the specific injury on October 12, 2022, but noted that additional diagnostics may affect his finding of causation for the cervical spine. (*Id*.)

On September 3, 2025, applicant was re-evaluated by the QME. (Applicant's Exhibit 2.) The diagnoses remained the same, but Dr. Graham noted that he had not received medical records. He provided some preliminary opinions, but noted they would not be finalized until he received medical records.

On December 15, 2025, the QME issued a supplemental report following receipt of additional diagnostics and records. (Applicant's Exhibit 3.) The QME reviewed reports including maximum medical improvement (MMI) reports from the Primary Treating Physician (PTP) Asher Kupperman, M.D., regarding the cervical spine and left carpal tunnel release on June 27, 2025, and September 24, 2024, respectively. (*Id*. at p. 2.) Applicant underwent carpal tunnel release on April 8, 2024. Dr. Graham amended his diagnoses to status post left shoulder arthroscopy debridement removal of loose bodies, subacromial decompression for left shoulder impingement and left shoulder osteoarthritis. (*Id.*) He did not change the diagnoses for the cervical spine, except that he added C5-6 spondylosis derangement disc disease as well as bilateral carpal tunnel syndrome status post left carpal tunnel release. (*Id.*) He found that the cervical condition as well as the left carpal tunnel syndrome was "precipitated" by the specific injury. He also found that the evidence of right carpal tunnel syndrome was the result of a cumulative trauma through the last date of employment. (*Id*.)

Dr. Graham also found that applicant was MMI for the left carpal tunnel syndrome on September 24, 2024, for the right carpal tunnel and left shoulder on September 3, 2025, and for the cervical spine on June 27, 2025. (*Id*. at p.3) He provided 7% whole person impairment (WPI)

for the neck, 2% WPI for the left shoulder impairment, 4% WPI for the left median nerve, and 2% for the right carpal tunnel syndrome. (*Id*.)

With regard to apportionment, Dr. Graham stated:

> …the claimant worked for this company for a mere five months. The peripheral nerve entrapment conditions take time to develop, over a span of years not five months, similarly with the claimant's C5-6 cervical condition. For the bilateral peripheral entrapment conditions, we have at least a 13 year history of physical work. He worked for the current company for only five months. For the claimant's bilateral peripheral entrapment conditions, this is considered CT over time: 10% is apportioned to Mar Vista Berry Inc., 90% to prior factors.
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> For the claimant's cervical condition, he was apparently asymptomatic and symptoms were precipitated as a result of this specific injury of 10/12/22. Orthopedic literature indicates that 10% of individuals with this claimant's cervical condition have some level of symptomatology/impairment, whereas 90% are completely asymptomatic. The claimant was asymptomatic antedating this specific injury and therefore, fell into the asymptomatic cohort. Another way of stating this is absenting this injury of 10/12/22, the claimant had a 10% chance of having some level of symptomatology from the cervical spine. Thusly, 10% is apportioned to nonindustrial factors, 90% to the specific injury of 10/12/22.
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> For the left shoulder, there is no medical evidence, pre-injury restriction, limitation, accommodation, and/or pathology that caused or can be related to the claimant's permanent disability; therefore, 0% apportionment to non-industrial factors."

(*Id*. at pp. 4-5.)

The matter proceeded to trial on May 4, 2026 on the issues of temporary disability, permanent disability, apportionment, need for further medical treatment, liability for self-procured medical treatment, and attorney fees.[1] (Minutes of Hearing and Orders (MOH), 3:2-8.) Likewise, the parties stipulated that applicant sustained injury to the cervical spine, left shoulder, and left wrist. (MOH, 2:13.)

On June 26, 2026, the WCJ issued the F&A. In the Opinion on Decision, the WCJ stated, "based on the medical reporting of Scott Graham, M.D., reporting in the capacity of a PQME, there is no basis for apportionment."

Defendant filed the Petition on July 14, 2026, contesting only the failure to find apportionment. Defendant argued that it was error for the WCJ not to adopt the apportionment analysis provided by the QME.

[1] On April 27, 2026, applicant filed a second Application for Adjudication alleging a cumulative injury to the neck and bilateral upper extremities through October 12, 2022, while employed with defendant. (ADJ22555704) This case was not at issue at trial on May 4, 2026, and we do not consider it.

DISCUSSION

I.

Petitions for reconsideration filed on or after July 14, 2026 are subject to Labor Code section 5909[2], which states that:

> (a) A petition for reconsideration is deemed to have been denied by the appeals board unless it is acted upon within 60 days from the date a trial judge transmits a case to the appeals board.
>
> (b)
>
> (1) When a trial judge transmits a case to the appeals board, the trial judge shall provide notice to the parties of the case and the appeals board.
>
> (2) For purposes of paragraph (1), service of the accompanying report, pursuant to subdivision (b) of Section 5900, shall constitute providing notice.

Under section 5909(a), the Appeals Board must act on a petition for reconsideration within 60 days of transmission of the case to the Appeals Board. Transmission is reflected in Events in the Electronic Adjudication Management System (EAMS). Specifically, in Case Events, under Event Description is the phrase "Sent to Recon" and under Additional Information is the phrase "The case is sent to the Recon board."

Here, according to Events, the case was transmitted to the Appeals Board on July 22, 2026, and 60 days from the date of transmission is Sunday, September 20, 2026. The next business day that is 60 days from the date of transmission, is Monday, September 21, 2026. (See Cal. Code Regs., tit. 8, § 10600(b).)[3] This decision is issued by or on Monday, September 21, 2026, so that we have timely acted on the petition as required by section 5909(a) (in effect from July 2, 2024 through June 30, 2026).

Section 5909(b)(1) requires that the parties and the Appeals Board be provided with notice of transmission of the case. Transmission of the case to the Appeals Board in EAMS provides notice to the Appeals Board. Thus, the requirement in subdivision (1) ensures that the parties are notified of the accurate date for the commencement of the 60-day period for the Appeals Board to

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[2] All further statutory references will be to the Labor Code unless otherwise indicated.

[3] WCAB Rule 10600(b) (Cal. Code Regs., tit. 8, § 10600(b)) states that:

> Unless otherwise provided by law, if the last day for exercising or performing any right or duty to act or respond falls on a weekend, or on a holiday for which the offices of the Workers' Compensation Appeals Board are closed, the act or response may be performed or exercised upon the next business day.

act on a petition. Section 5909(b)(2) provides that service of the Report and Recommendation shall be notice of transmission.

Here, according to the proof of service for the Report by the WCJ, the Report was served on July 22, 2026, and the case was transmitted to the Appeals Board on July 22, 2026. Service of the Report and transmission of the case to the Appeals Board occurred on the same day. Thus, we conclude that the parties were provided with the notice of transmission required by section 5909(b)(1) because service of the Report in compliance with section 5909(b)(2) provided them with actual notice as to the commencement of the 60-day period on July 22, 2026.

II.

We agree with the WCJ's analysis on the issue of whether the QME's opinion as to apportionment is based on substantial evidence pursuant to *Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604, 611 (Appeals Board en banc).) The mere fact that a medical report assigns approximate percentages of industrial and nonindustrial causation does not make the report reliable medical evidence by itself. (*E.L. Yeager Construction v. Workers' Comp. Appeals Bd.* (*Gatten*) (2006) 145 Cal.App.4th 922, 927–928 [71 Cal.Comp.Cases 1687].) Rather, the report must disclose familiarity with the concepts of apportionment, describe in detail the exact nature of the apportionable disability, and set forth the basis for the opinion that factors other than the industrial injury at issue caused permanent disability. (*Escobedo*, at p. 621.) Pursuant to *Escobedo*, to be substantial evidence on the issue of the approximate percentages of permanent disability due to the direct results of the injury and the approximate percentage of permanent disability due to other factors, a physician's opinion must rely on reasonable medical probability, cannot be speculative, must rely on pertinent facts and/or an adequate examination and history, and must set forth the reasoning in support of its conclusions. (*Id*. at p. 621.) That is, a physician must explain the "how and why" of their apportionment opinion (*Ibid*.) and consider all potential causes of disability, whether from a current, prior or subsequent industrial or nonindustrial injury or condition. (*Benson v. The Permanente Medical Group* (2007) 72 Cal.Comp.Cases 1620, 1622 (Appeals Board en banc.)

We agree, particularly in regard to the cervical spine, that the QME report did not rely on any medical evidence to support a finding that 10% of the injury *in this case* was due to a non-industrial cause. The QME's analysis essentially relies on probability for asymptomatic versus symptomatic for applicant's specific diagnosis, rather than evaluating the applicant's actual

condition or prior condition. There are no opinions or review of diagnostics, particularly the cervical MRI, that indicate that there was an asymptomatic condition that pre-dated the specific injury.

The analysis for the bilateral entrapment condition is somewhat more complicated. The QME opines that the bilateral entrapment condition is the result of cumulative trauma and divides liability strictly on the basis of length of employment. However, the parties have stipulated that the left wrist condition is the result of the specific injury at issue here, and we see no reason to disturb that stipulation. (See Lab. Code, § 5702.) The parties knowingly stipulated to the left wrist as a compensable body part of the specific injury, not a cumulative injury. Further, in their Petition, defendant does not raise compensability of the left wrist. Notably, the QME did not provide substantial medical evidence or even factual evidence to support a finding of cumulative injury to overcome stipulations to compensability for the specific injury. Likewise, the QME also found in his December 15, 2025 report that "the left carpal tunnel symptomatology was precipitated by the industrial injury 10/12/22." As a result, we agree with the WCJ that applicant has met his burden of proving causation for the left wrist to the specific injury.

Thus, the burden of proof to establish apportionment falls on defendant. (*Pullman Kellogg v. Workers' Comp. Appeals Bd.* (*Normand*) (1980) 26 Cal.3d 450, 456; *Kopping v. Workers' Comp. Appeals Bd*. (2006) 142 Cal.App.4th 1099, 1115.) In other words, an employee does not have the burden of disproving apportionment while defendant remains passive. (*Alcantar v. Martinez* [2025 Cal. Wrk. Comp. P.D. LEXIS 231, *9]; *Moraido v. County of San Diego*; *Arias v. William Roofing Co*.; *Matias v. Naturipe Berry Growers*; *Herrera v. Maple Leaf Foods* [2018 Cal. Wrk. Comp. P.D. LEXIS 430, *15].)

The apportionment analysis for the left wrist from the QME is purely based on a mathematical division of potential liability of potential employers in a cumulative injury similar to a section 5500.5 analysis. Further, the QME considers applicant's entire employment history as a tractor driver as a basis to reach the mathematical conclusion.[4] Because this is a specific injury, by definition, only one employer can be liable for the injury and resulting permanent disability, so that this type of mathematical division does not make sense. Moreover, this mathematical division

[4] It is also noted that pursuant to section 5500.5(a), liability is limited to "the last year of employment exposing employee to the hazards of the occupation" and further, liability for cumulative injury shall not be apportioned to prior or subsequent years.

does not consider comparative contribution, apart from time, of each employment as there was no further inquiry into each job description and requirements.

Of course, it is possible that prior industrial injuries or employment have contributed to the ultimate permanent disability award pursuant to *Escobedo*, *supra* 70 Cal.Comp.Cases 604, 611 and *Benson v. The Permanente Medical Group* (2007) 72 Cal.Comp.Cases 1620, 1622 (Appeals Board en banc.) Apportionment can include pathology, asymptomatic prior conditions, and retroactive prophylactic work preclusions, provided there is substantial evidence establishing that these other factors have caused permanent disability. Here, the QME does not properly address that type of apportionment. While he mentions that applicant previously worked as a tractor driver over many years, there is no additional discussion as to how that employment would cause applicant's condition and whether the employment *actually* caused impairment. Again, there is no review of any medical records prior to applicant's employment with defendant nor any suggestion by applicant that he had experienced prior symptoms or injury. The analysis is purely speculative and not substantial. Thus, defendant did not meet their burden to support apportionment of any of the permanent disability found in this matter.

Defendant suggests that apportionment, when outlined by a QME, is mandatory. This is not correct. While it is true that section 4663 mandates that an evaluating physician provide an opinion as to apportionment, any finding of apportionment by a WCJ must be supported by substantial evidence. If the opinion by the evaluating physician is not substantial evidence, there is no basis for the WCJ to make such a finding. Here, as explained above, the QME's opinion is not substantial evidence.

Accordingly, we deny defendant's Petition for Reconsideration.

For the foregoing reasons,

IT IS ORDERED that the Petition for Reconsideration is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

I CONCUR,

/s/ JOSÉ H. RAZO, COMMISSIONER

/s/ JOSEPH V. CAPURRO, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

SEPTEMBER 18, 2026

SERVICE MADE ON THE ABOVE DATE ON THE PERSONS LISTED BELOW AT THEIR ADDRESSES SHOWN ON THE CURRENT OFFICIAL ADDRESS RECORD.

JORGE MACHUCA
WOLFF-WALKER LAW
SAPRA & NAVARRA, LLP

TF/md

I certify that I affixed the official seal of the Workers' Compensation Appeals Board to this original decision on this date.
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